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August 25, 1999

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R. Dreal

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

In re: MacDonald et al
Serial No.: 09/312352
Filing Date: May 14, 1999
Docket#: KEY1019US

DECISION ON REQUEST
FOR RETROACTIVE LICENSE
UNDER 37 CFR 5.25

Title: RETAINING WALL BLOCK

This is in response to the petition received on June 14, 1999 for a retroactive license.

37 CFR 5.25(a) requires the following:

1. A listing of each of the foreign countries in which the unlicensed patent application material was filed,
2. The dates on which the material was filed in each country,
3. A verified statement (oath or declaration) containing:
 - i. An averment that the subject matter in question was not under a secrecy order at the time it was filed abroad, and that it is not currently under a secrecy order,
 - ii. A showing that the license has been diligently sought after discovery of the proscribed foreign filing, and
 - iii. An explanation of why the material was filed abroad through error and without deceptive intent without the required license under § 5.11 first having been obtained, and
4. The required fee (§ 1.17(h)).

The petition is Denied at this time in that the petition is defective since the requirements set forth in 37 C.F.R. 5.25(a)(3)(ii), regarding the diligent pursuit of the foreign filing license, have not been satisfied. The error was designated as discovered, upon which the proper procedures were documents and statements were prepared; however, no date was mentioned as being associated with this "discovery" or "advisement." The circumstances concerning this "discovery" should be delineated so that the diligence regarding this petition can be determined. A verified statement (oath or declaration) should be made by the person(s) regarding these circumstances, to provide the clear delineation of the diligence under the requirements set forth in 37 C.F.R. 5.25(a)(3)(ii).



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Accordingly, the provisions of 37 CFR 5.25 not having been fully met, the petition is denied, and in the absence of any response within **60 days** of the mailing date of this letter, such denial will be made final and the final action under 35 U.S.C. 185 will be taken. Extensions of time may be had under 37 C.F.R. 1.136(a).

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